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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KIM, JENNIFER M	

ART UNIT	PAPER NUMBER
1617	

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04/28/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/922,233	ERANI, SIMON	
	Examiner	Art Unit	
	Jennifer Kim	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/11/2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The amendment filed February 11, 2008 have been received and entered into the application.

Action Summary

The rejection of claims 19-40 under 35 U.S.C. 112, first paragraph is being maintained for the reason stated in the previous Office Action.

The rejection of claims 1-5, 11-17, 19-23, 29-31 and 33-39 under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (WO 98/44904) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) is being maintained for the reasons stated in the previous Office Action.

The rejection of claims 6-10, 18, 24-28, 32 and 40 under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (WO 98/44904) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) as applied to claims 1, 3-5, 11-17, 19, 21-23, 29-31and 37-39 and further in view of Saso et al. (1996) is being maintained for the reasons stated in the previous Office Action.

Response to Arguments

Applicant's arguments filed February 11, 2008 have been fully considered but they are not persuasive. With regard to the rejection under 35 U.S.C. 112, first paragraph (new matter rejection), Applicant argues that the other forms of vitamin A, vitamin C, etc is expressly set forth in the first paragraph of the Detailed Description section of the application (specification page 3, lines 3-5). This is not found persuasive because possession may be shown in many ways. For example, possession may be shown by describing an actual reduction to practice of the claimed invention. Possession may be shown by a clear depiction of the invention in detailed drawings or in structural chemical formulas which permit a person skilled in the art to clearly recognize that applicant had possession of the claimed invention. In this case, the specification lacks sufficient, relevant, identifying characteristics so long as a person skilled in the art would recognize that the inventor had possession of the claimed invention. The instant specification teaches utilization of the composition comprising **specific compounds** such as Retinyl Palmitate Polypeptide, Ascorbylmethylsilanol Pectinate, Tocopheryl Polypeptide, Cholescalciferol Polypeptide, and or Niacinamide Polypeptide as Vitamin A **Polypeptide**, Vitamin B3 **Polypeptide**, Vitamin E **Polypeptide** etc, rather than the **broad genus of any** Vitamin A, Vitamin E, etc. Therefore, the New Matter rejection previously made is deemed proper. Applicant argues that there is no evidence that prior researchers have recognized the benefits of combining even one of the four polypeptide components with Ascorbylmethylsilanol Pectinate for a skin care product, much less the combination of all five components

together which is required by several of the claims. Further, there is no recognition of the benefits of the particular concentrations recited in the claims. This is not found persuasive because the usefulness of the each of the active agents in a skin care is well taught by the cited references. Moreover, the finite number of components one need choose among are within the skill of the artisan to select and test with expectation of success, and in accord with obviousness as of the 2007 Supreme Court decision in KSR V TELEFLEX @82 USPQ 2d @ 1385. As to the claimed ratio, once a compound is well known in the art as having utility as having benefits in a skin care, it is obvious to generally determine the optimum amounts to be employed. Therefore, the claimed invention, as a whole, would have been obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The terms " a form of Vitamin A" " a form of Vitamin C", "a form of Vitamin E, "a form of Vitamin D" and "a form of Vitamin B3" set forth in claim 19 lack literal support in the specification as filed. This is a New Matter rejection.

Reminding claims are rejected to the extent that they depend from claim 19.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 11-17, 19-23, 29-31and 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (WO 98/44904) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II), all of record.

Fructus et al. teach a dermatological and/or cosmetic composition for treating symptoms of skin ageing comprising a combination of at least one methylated silanol preferably, ascorbylmethylsilanol pectinate (Ascorbosilane C®, Exsymol). **(abstract, page 7, lines 10-11, page 8, lines 7-8 and 10-12).** Fructus et al. teach **vitamin C** derivative (tocopheryl acetate), **vitamin A** derivative (retinyl palmitate) and other

components can be employed in the composition **(page 12, lines 16-19, page 13, lines 1-7, Table 3, table 7)**.

Fructus et al. does not teach the employment of vitamins A (retinyl palmitate) and C (tocopheryl polypeptide) as protein bounded and cholecalciferol polypeptide and niacinamide polypeptide and the specific ratio amounts set forth in claim 2.

Brooks II teaches that the protein bonded vitamins of **vitamin A and C** (retinyl palmitate polypeptide and tocopherol polypeptide) are useful in cosmetic for the skin because they provide safe delivery system for cosmetic vitamins. **(cover page under VITAZYMES Protein Bonded Vitamins, Description of products and table on second page).** Brooks II teaches that niacinamide polypeptide and cholecalciferol polypeptide are also available commercially and have advantages use in the skin care. **(VITAZYME D, VITAZYME B3, second page).**

It would have been obvious to one of ordinary skill in the art to modify the composition of Fructus et al. and employ the peptide bonded (retinyl palmitate poly peptide and tocopheryl polypeptide) in place of tocopheryl acetate and retinal palmitate. One would have been motivated to make such a modification in order to achieve safe delivery system of vitamin A and E of the composition taught by Fructus et al. Further it would have been obvious to combine commercially well-known niacinamide polypeptide and cholecalciferol polypeptide in Fructus et al's composition. One would have been motivated to make such a modification in order to achieve at least an additive effect in provided skin care composition taught by Fructus et al. and Brook II. **Applicant's newly add limitation of the terms " a form of Vitamin A" " a form of Vitamin C", "a**

form of Vitamin E, "a form of Vitamin D" and "a form of Vitamin B3" set forth in claim 19 is obvious because each of the active agents to be utilized are derived from the form of above vitamins and that these are inseparable characteristics.

Furthermore, no unobviousness is seen in the ratio claimed because once the usefulness of a compound is known to treat a condition, it is within the skill of the artisan to determine the optimum ratio.

Claims 6-10, 18, 24-28, 32 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (WO 98/44904) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) of record as applied to claims 1, 3-5, 11-17, 19, 21-23, 29-31and 37-39 and further in view of Saso et al. (1996), all of record.

The teaching of Fructus et al. and Brooks II as applied as before.

Fructus et al. and Brooks do not teach the glycolic acid and the amounts.

Saso et al. teach that alpha-hydroxy acids (e.g. glycolic acid) are anti-ageing compounds. (see title, abstract).

It would have been obvious to one of ordinary skill in the art to combine glycolic acid into Fructus et al's composition as modified by Brooks II. One would have been motivated to combine glycolic acid into Fructus et al.'s composition as modified by Brooks II et al. in order to achieve at least an additive effect in treatment of anti-aging of skin. The motivation for combining the components flows from their individually known common utility (see In re Kerkhoven, 205 USPQ 1069(CCPPA 1980)). It would be

expected that the combination of components would treat anti-ageing of skin as well. The amount of glycolic acid to be used is deemed obvious since they are all within the knowledge of the skilled pharmacologist and represent conventional formulations and modes of administration.

Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

None of the claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer Kim/
Primary Examiner, Art Unit 1617

Jmk
April 25, 2008